

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TAMMY WILLIAMS)	
Claimant)	
VS.)	
)	Docket No. 1,031,731
ROLLING HILLS HEALTH CENTER)	
Respondent)	
AND)	
)	
KANSAS HEALTH CARE ASSOCIATION)	
Insurance Fund)	

ORDER

Respondent and its insurance fund appealed the June 29, 2007, preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. Kip A. Kubin of Kansas City, Missouri, appeared for respondent and its insurance fund (respondent).

ISSUES

Claimant alleges she injured her left shoulder and arm on October 10, 2006, while working for respondent. At this juncture, respondent does not challenge that claimant's injury resulted from an accident that arose out of and in the course of her employment with respondent. The only issue the parties addressed at the June 28, 2007, preliminary hearing was whether claimant was entitled to receive temporary total disability benefits for the period from October 13, 2006, until May 15, 2007.

In the June 29, 2007, Order for Compensation, Judge Avery granted claimant temporary total disability benefits for the period from October 18, 2006, to May 15, 2007. Responding to respondent's argument that claimant was not entitled to receive temporary total disability benefits as she resigned her position with respondent, Judge Avery specifically found claimant's prescription medications made it unsafe for her to drive from her home in Emporia to work in Topeka.

Respondent contends Judge Avery “exceeded his jurisdiction and ignored the uncontroverted evidence in the record.”¹ It is not clear from respondent’s brief whether the basis of respondent’s jurisdictional argument is that claimant resigned her position as respondent’s director of nursing, or that claimant did not present an opinion regarding her ability to work from an authorized health provider, or that the Judge’s decision is allegedly contrary to uncontradicted evidence. In short, respondent requests the Board to reverse the preliminary hearing Order.

Conversely, claimant requests the Board to dismiss this appeal on the basis the Board does not have jurisdiction to review a preliminary hearing finding that a worker is temporarily and totally disabled. Claimant also challenges respondent’s assertions that the Judge ignored uncontradicted evidence.

The only issues on this appeal are:

1. Does the Board have jurisdiction to review this preliminary hearing Order?
2. If so, did the Judge err by granting claimant the temporary total disability benefits in question?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties’ arguments, the undersigned Board Member concludes the Board does not have jurisdiction at this juncture to review the Judge’s preliminary hearing finding that claimant is temporarily and totally disabled. Consequently, this appeal should be dismissed.

At this juncture, respondent does not challenge the fact that claimant injured her left shoulder on October 10, 2006, in an accident that arose out of and in the course of her employment as respondent’s director of nursing. In essence, the issue respondent raises to the Board is that the Judge ignored uncontradicted evidence and, instead, found claimant was temporarily and totally disabled as contemplated by K.S.A. 44-510c.

But this is an appeal from a preliminary hearing order. Therefore, the Board’s jurisdiction to review preliminary hearing findings is limited. At this juncture of the claim, not every alleged error is subject to review. The Board, in general, can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.²

¹ Respondent’s Brief at 1 (filed July 24, 2007).

² K.S.A. 2006 Supp. 44-551(i)(2)(A).

Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term “certain defenses” refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.³

The issue whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a that is subject to review from a preliminary hearing order. And there is no question administrative law judges have the jurisdiction and authority to decide that issue at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁴

Respondent’s argument that the Judge exceeded his jurisdiction by awarding temporary total disability benefits without medical evidence is without merit. Temporary total disability benefits can be awarded on claimant’s testimony alone.⁵ Likewise, respondent’s argument that the Judge awarded temporary total disability benefits despite uncontradicted evidence to the contrary is also without merit. Claimant testified as to her injury, symptoms, and the treatment (including the shoulder surgery and narcotic medications) she received. The record also includes medical records outlining her medical restrictions.

³ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

⁴ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁵ See *Overstreet v. Mid-West Conveyor Co., Inc.*, 26 Kan. App. 2d 586, 587, 994 P.2d 639 (1999).

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁶ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, this Board Member dismisses respondent's appeal.

IT IS SO ORDERED.

Dated this ____ day of September, 2007.

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Fund
Brad E. Avery, Administrative Law Judge

⁶ K.S.A. 44-534a.